

ONEIDA COUNTY BOARD OF ADJUSTMENT – PUBLIC HEARING  
HEARING SUMMARY  
JUNE 21, 2018

Chairman Harland Lee called the meeting to order at 1:00 pm in accordance with the Wisconsin Open Meeting Law.

Roll call of Board members present: Mr. Albert, “here”; Mr. Bloom, “here”; Mr. Hansen, “here”; Mr. Ross, “here”; Mr. Hammer, “here”; and Mr. Lee, “here”.

Members absent: None

County staff members present: Pete Wegner, Assistant Director and Julie Petraitis, Program Assistant

Other individuals present: See Sign in Sheet.

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Chairman Harland Lee stated that the meeting will be held in accordance with Wisconsin open meeting law and will be tape-recorded and sworn testimony will be transcribed. The Board of Adjustment asks that only one person speak at a time because of the difficulty in transcribing when several people are talking at once. The Board of Adjustment is made up of five regular members and two alternates, one alternate being present today, who will take part in the hearing until the public hearing is closed, at which time one of the alternates will not take part in the deliberation. Anyone wishing to testify must identify themselves by name, address, and interest in the appeal and shall be placed under oath.

Chairman Harland Lee swore in Pete Wegner and Cory Schlagel.

Secretary Phil Albert read the notice of public hearing for Appeal No.18-002 of D&S Vacation Properties, LLC, owner, to appeal the denial of a Zoning Permit to build a 12 ft. x 20.4 ft. addition on the landward side of an existing 20.4 ft. x 30.6 ft. dwelling located 24.8 ft. from the ordinary high water mark (OHWM) of Pickerel Lake. The property is located at 6984 Pickerel Lake Rd., described as Section 8, T39N, R8E, Loon’s Landing Condo, Unit 7 Town of Newbold, Oneida County, Wisconsin.

The Notice of Public Hearing was published in the Northwoods River News on June 7 and June 14, 2018. Mr. Albert provided the proof of publication; and noted that the media was properly notified.

The Oneida County Board of Adjustment Rules of Procedure, Section 178.05(12), Chapter 17, Oneida County Code of Ordinance, provide that a timely appeal shall stay all proceedings and furtherance of the action appealed from, unless such stay would cause

imminent peril to life or property.

The Board of Adjustment will conduct an onsite inspection of the property involved in this appeal beginning at approximately 10:00 am prior to the hearing. Pertinent property boundaries and locations of existing and proposed structures shall be clearly identified. A representative or the appellant must be present. The inspection shall be open to the public.

Copies of appeals and related documents are available for public inspection during normal business hours at the Planning and Zoning Office, Oneida County Courthouse, Rhinelander, WI 54501. The Oneida County Zoning and Shoreland Protection Ordinance is available on the Internet at <http://www.co.oneida.wi.gov/>.

Secretary Albert stated that all media outlets were notified of the public hearing and the onsite inspection was conducted at approximately 10:00 on. Cory Schlagel and Julie Schlagel were present at the site along with all Board members and one alternate and zoning staff, Diann Koshuta.

Prior to the public hearing the Board conducted an onsite inspection at 6984 Pickerel Lake Rd., further described as Section 8, T39N, R8E, Loon's Landing Condo, Unit 7, Town of Newbold, Oneida County, Wisconsin. Observations by the Board: The property boundaries were adequately marked with lot corner stakes and the rear expansion 12 ft. addition also marked by stake. The highway/road right-of-way were adequately marked, not appropriate in this situation. The well and sanitary facilities are assumed to be common to the condominium association. The outline of the proposed construction was adequately marked based on the markings at the rear of the cottage and the side boundaries. In terms of Unit #7, it is one in a row of older buildings, about 24.8 feet from the high water mark. In terms of the side boundaries, common lot stakes marked them. In terms of the right-of-way and the center of the road, again, not appropriate in this situation. It was noticed there is a sand road between the row of condominiums and a white fence with a steep decline down to the shoreline. The cottage faces are about 12 ft. from the fence line and the steep decline down to the ordinary high water mark. In terms of erosion, there are some concerns with that sand road in front of the cottages but none was apparent during our site visit this morning. Existing structures, they are older cottages, part of an original resort. One of nine cottages in a row along the shoreline. It is a fairly large condominium complex and again, the structure in question is condominium #7. In terms of other observations, there were some significant trees; they appear to be white pine, behind the cottages, three to six that may have to be downed in order to provide for the proposed expansion. Other observations, aged cottages that were originally part of a resort with a road between the cottages. The cottages are used as rentals and personal use.

Chairman Harland Lee stated that the Board will hear testimony from the appellant/agent first and then the opposition. Following that, the appellant and opposition will have an opportunity for rebuttal and then closing statements. The public hearing will then be closed from further testimony. Consideration and additional questions can be asked by the Board members of the appellant or the opposition during deliberations. You may stay for the disposition of the appeal. Upon conclusion of the deliberation of the Board, the

Chair will call for a motion and a second, and a roll call vote will be taken for the decision of the Board.

### **SWORN TESTIMONY-APPELLANT.**

Cory Schlager, owner, began his testimony by giving a brief history of his families time at this condominium complex. He stated that they wanted to expand the cottage since they acquired it. The main reason is to accommodate the family and increase utility and efficiency, as there is not a lot of insulation in them. The cottage is used year around. They have been discussing their options with Pete Wegner since about 2013. When they heard the shoreland zoning ordinance was going to change in 2018 they wanted to ensure that they had an opportunity to expand the building horizontally. Mr. Schlager stated that they applied for the addition under Section 9.99 (B) (4) (a) (3) to add the 12' addition on to the rear of the cabin using the expandable area. More than half of the dwelling is more than 40' away from the lakeshore and they are seeking to put on an addition, which meets the standards on the landward side of it. The use and capacity would remain the same. It is a three bedroom dwelling with one bathroom and that is what it would be in the after. Their goal is to expand the size of the bedrooms and some intention of making it ADA compliant, if they can get an at-grade entrance and increase the size of the doorways and the room size so that people with handicaps or difficulty getting around would be able to rent the cabin. Mr. Schlager stated that their permit was denied based on Section 9.96 of the ordinance because they would not be able to meet the mitigation requirement.

They are appealing the denial with meeting the three criteria.

The first criteria required is unique physical property limitations. They purchased full ownership of the limited element shown as unit 7 on the condominium plat and the total area of the limited element, which was staked out with the lot line stakes, is approximately 3,000 square feet. They own about 1/9<sup>th</sup> interest in the remaining common element of the five-acre resort. If you look at the size of any of the condominium units, they would not meet any normal requirement for a building lot or a land division. The requirement to mitigate impacts the entire 423' of resort frontage.

The second criteria required is no harm to public interest. The cabins on this resort, along with the lakeside access have existed in their current configuration for many years. If allowed to develop the lot, as proposed, the net result would be an improvement to runoff concerns. Improving the parcel will ultimately benefit and not harm public interest.

The third criteria required is unnecessary hardship. The conformity with such restrictions is unnecessarily burdensome. Compliance with the mitigation portion of the shoreland-zoning ordinance is not possible as an individual condominium unit.

Peter S Wegner, Assistant Zoning Director, testified that the permit was denied under the old language because he was not able to meet the mitigation requirements. Many of the things he mentioned were more related to rules in a condominium than in the ordinance. He made the statement that our ordinance does not address it and that is because we cannot address it differently. We have to look at it as a condo is a property in itself and all the rules that apply to that, this is called a parcel with numerous units, it has to be treated the same way as a parcel with just one unit. Looking at the three criteria, the first one being the unique physical property limitation: the County does not feel there is a physical property limitation. Looking at the property as a whole there are

areas where you could move or relocate meeting the applicable setback. There are options where you could eliminate the physical property limitation. It's not like there's ordinary high water mark and road limitations where you can't meet the applicable setbacks. Of course, you have to amend your condominium plat, but that's just one of the disadvantages of having a condominium. As far as public interest, the County feels it would be contrary to public interest to grant a variance because there isn't a physical property limitation. If you look at the general purposes of the ordinance those would not be met because of the fact that there is nothing unique about this parcel as a whole that would restrict you from doing what you are requesting at an applicable setback. Also, as far as unnecessary hardship. If you look at it as a use variance versus a structural variance your photo showing that these units have been in place for fifty years, the County would feel that has been reasonable use for the last fifty-years so there really isn't an unnecessary hardship. That would also piggy- back onto no harm to public interest because the County does not feel that you meet the physical property limitation or it being an unnecessary hardship. Therefore, it would be contrary to public interest to grant a variance. There are options that, I don't know exactly what was defined as examples of utility or efficiency but under the ordinance today, he'd be able to go up or down within the footprint. Again, that may not, at this time, be permitted within the condominium, but that is something you could possibly amend the condominium plat to permit down the road. In conclusion, based on what I just said the County does not feel a variance should be granted.

Mr. Lee stated that the Board requested an opinion from the DNR regarding this requested variance. He read a few points of that letter into the record. He asked Mr. Wegner if mitigation requirements were still part of the "new" ordinance. Mr. Wegner stated that the specific section cited is not. Mr. Wegner explained that this permit was denied under the old ordinance language, which required mitigation. The new ordinance language a County cannot impose restrictions like mitigation or vegetating the buffer zone for replacement/expansion of a non-conforming structure.

Mr. Lee stated that the DNR wrote 'A property owner may not seek an area variance to waive a mitigation requirement because the shoreland mitigation requirement is not a dimensional standard in the ordinance. Mitigation is a requirement that must be met in exchange for horizontal expansion. This is also not a use variance which would not be allowed under shoreland zoning'. Mr. Lee asked Mr. Wegner where we are in all this. Mr. Wegner said he felt this was a blanket statement that he is not asking to be closer to the water or the right-of-way; he is asking the Board to waive the mitigation requirement so technically it is not an area variance. Where we are at with that now is under the current language Zoning cannot require anybody to vegetate the 35' buffer. It can be an option, but cannot be required as the language did at the time of denial. Under the new language he is not able to go landward, he is only able to go up or down within the footprint.

Mr. Lee closed the public portion of the public hearing.

Mr. Ross stated that he feels the Board should concentrate on the three criteria that need to be met.

Mr. Bloom stated that he feels the appellant presented his case well but does not feel the three criteria are met.

Mr. Hansen stated that he agrees with Mr. Bloom.

Mr. Albert concurs with the statements made this far.

Mr. Lee stated he is in general agreement.

**Motion by Guy Hansen, second by John Bloom to deny the variance request by D&S Vacation Properties, LLC based on the fact that it does not meet any of the three criteria it does not have unique physical property limitations; there is no harm to interest because there is really only 12' of already vegetated buffer there and there is no unnecessary hardship because the building can be used as it has been for fifty years and there has been no proof of unnecessary hardship made. On roll call vote: John Bloom, "aye"; Guy Hansen, "aye"; Phil Albert, "aye"; Norris Ross, "aye"; and Harland Lee, "aye". Unanimous.**

**Motion by Harland Lee, second by Phil Albert to have the decision finalized by June 27, 2018. With all members present voting "aye", the motion carried.**

**2:02 pm - The meeting was adjourned on a motion by Guy Hansen and second by Norris Ross; and all members voting aye.**

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Harland Lee, Chairman

Phil Albert, Secretary